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No. 82-2022

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JAMES BEIL,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the police had reasonable and articulable suspicion that criminal activity was being, or was about to be engaged in, sufficient to allow an investigatory stop in accordance with *Terry v. Ohio*.

2. Whether the police had probable cause to search petitioner's trunk, where petitioner exited a parking lot, driving directly behind a stolen vehicle whose driver had previously been in his car, and where police found a vise grip and an Allen-type wrench in petitioner's back seat.

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OPINION BELOW

A copy of the opinion of the Illinois Appellate Court, Second District, can be found as Appendix A to petitioner's petition. The opinion is now reported as *People v. Beil*, 110 Ill. App. 3d 291, 442 N.E.2d 291 (2nd Dist. 1982).

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as treated more fully below, respondent submits that no good reason exists for this Court to exercise its sound judicial discretion and grant the petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., Amend. IV provides that:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST., Amend. XIV provides, in pertinent part, that:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The facts relevant to the issues raised by petitioner are adequately set forth in the opinion of the Illinois Appellate Court. *People v. Beil*, 110 Ill. App. 3d 291, 442 N.E.2d 291 (2nd Dist. 1982).

REASONS FOR DENYING THE WRIT

I.

THE FACTS OF THIS CASE CLEARLY DEMONSTRATE THAT THE POLICE HAD REASONABLE AND ARTICULABLE SUSPICION THAT CRIMINAL ACTIVITY HAD BEEN, WAS, OR WAS ABOUT TO BE ENGAGED IN, SUFFICIENT TO ALLOW AN INVESTIGATORY STOP IN ACCORDANCE WITH *TERRY v. OHIO*.

In *Terry v. Ohio*, 392 U.S. 1 (1968), this Court held that a police officer may stop and temporarily detain a person in order to make a limited investigation. The officer need not have probable cause to do so, but must be able to point to specific and articulable facts which, when combined with reasonable inferences drawn from the officer's experience, would warrant the extent of the intrusion. 392 U.S. at 27.

This term in *United States v. Place*, 51 U.S.L.W. 4844 (June 20, 1983), this Court noted that in *Terry*, the Court:

> implicitly acknowledged the authority of the police to make a *forcible stop* of a person when the officer has reasonable, articulable suspicion that the person

> has been, is, or is about to be engaged in criminal activity. [Emphasis in original].

51 U.S.L.W. at 4846.

Thus, in this case, it is a question of fact, i.e., whether Detective Romani had a reasonable and articulable suspicion that criminal activity had been, was, or was about to be engaged in. The state appellate court held that he did:

> Prior to the stop, Officers Romani and Golz each observed [petitioner] and his companions engage in a course of conduct which caught their professional attention as police officers. This included stopping in the shopping center parking lot and opening the trunk of the car, then immediately exiting that lot and proceeding to another parking lot. There [petitioner] parked his car behind the white Cadillac convertible and engaged in conversation with a man standing by two cars who then ducked down between them. When the white Cadillac was then driven towards the exit defendant followed it in his car. At that point, based upon these observations and Romani's association of Beil's name with auto thefts, the officers had specific and articulable facts upon which to base a belief that further investigation was warranted. Their stop of [petitioner] for that purpose was therefore proper.

110 Ill. App. 3d at 294, 442 N.E.2d at 293.

Petitioner argues that the activities observed by the officer amounted to nothing more than an "inarticulate hunch." Petition at 10. He cites *Brown v. Texas*, 443 U.S. 47 (1979) and *Delaware v. Prouse*, 440 U.S. 648 (1979) as applicable to the factual situation presented herein. However, a brief review of the facts in those cases reveals that they are substantially different from the instant case.

In *Brown v. Texas, supra*, police officers stopped a man walking in an alley because the situation "looked suspicious" and because they had never seen him in that area before. 443 U.S. at 48-49. Likewise, in *Delaware v. Prouse, supra*, a state police officer stopped a vehicle even though "he had observed neither traffic nor equipment violations nor any suspicious activity." 440 U.S. at 650. By the citations of these authorities, however, petitioner acknowledges that the issue before this Court is one of fact, rather than of some error in the legal analysis made by the state appellate court. Indeed, whether police observation of suspicious conduct rises to a level of cause to make an investigatory stop is clearly an issue of fact. See, LaFave, *Search and Seizure*, §9.3(a), 69-82. Petitioner does not argue that the *Terry* standard is incorrect or does not apply in this case, merely that the facts of this case do not amount to probable cause when analyzed under the *Terry* standard.

Respondent submits that the facts of this case clearly demonstrate specific and articulable facts, which, when combined with reasonable inferences drawn from Officer Romani's experience, gave him cause to stop the two Cadillacs for purposes of investigation. Romani's recognition of petitioner's name in connection with auto theft in the area; a high incidence of auto theft in the area; the man in the plaid shirt "ducking down" between the two cars; the two cars pulling out together; the individuals traveling from one parking lot to another, all combined to give rise to the authority to stop petitioner.

It is clear that there was no violation of *Terry v. Ohio, supra*. This Court should refuse to exercise its discretion and deny the petition for writ of certiorari.

II.

THE POLICE WERE JUSTIFIED IN SEARCHING THE TRUNK OF PETITIONER'S CAR, BASED UPON THE FACT THAT THEY HAD PROBABLE CAUSE TO BELIEVE THAT A CRIME HAD BEEN COMMITTED AND THAT EVIDENCE OF THAT CRIME WAS CONTAINED IN PETITIONER'S VEHICLE.

As indicated in Section I, *infra*, the police acted properly in making the initial stop of petitioner's Cadillac as well as the stolen Cadillac, as both vehicles exited the parking lot.

Petitioner claims, however, that he just happened to be exiting the lot at the same time as the stolen vehicle, and that his vehicle was improperly stopped and searched. Petitioner ignores the fact that he was observed as having the driver of the stolen Cadillac in his car, that a vise grip and an Allen-type wrench were found on his backseat, and that burglary tools were found in his trunk. 110 Ill. App. 3d at 292, 442 N.E.2d at 292. His scenario as having been in the wrong place at the wrong time is refuted by the facts.

As the appellate court correctly held:

> In the case of an automobile, if the officer's investigation uncovers facts which give probable cause to believe that a crime has been committed and that evidence of that is contained in the vehicle in which the suspect is riding, the officer may conduct a search of the vehicle without a warrant. (*Michigan v. Thomas* (1982), ... U.S. ....., 73 L.Ed.2d 750, 102 S.Ct. 3079; *United States v. Ross* (1982), ... U.S. ....., 72 L.Ed.2d 572, 102 S.Ct. 2157; *Chambers v. Maroney* (1970), 399 U.S. 42, 26 L.Ed.2d 419 90 S.Ct. 1975; *Carroll v. United States*, (1925), 267 U.S. 32, 69 L.Ed.2d 543, 45 S.Ct. 280). Given probable cause, the permissible scope of such a warrantless search is as

> broad as that which a magistrate could have legitimately authorized by warrant. Thus, the search may extend to every part of the vehicle, and its contents, that may conceal the object of the search. [Citations omitted]. The permissible areas of search include the trunk of the vehicle. [Citations omitted]. The fact that the suspect may have been arrested and is without access to the vehicle or that the vehicle has been immobilized and taken to the station house does not obviate the justification to conduct the warrantless search.

110 Ill. App. 3d at 293-294, 442 N.E.2d at 293. Little more need be said in support of a rejection of petitioner's argument, nor was the appellate court, as petitioner suggests, "over-generous" to the police. Rather, the court merely applied the law, as decided by this Court, to the actions of the police, and correctly found those actions to be in conformity with the law.

Thus, petitioner's contention that there was no authority to permit the police to search his car is without merit and should be rejected by this Court. Again, petitioner does not contend that the law in this area is incorrect, merely that the appellate court erred in its analysis of the factual situation presented in this case.

For the foregoing reasons, respondent respectfully requests that this Court decline to exercise its discretion, and deny the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court deny the petitioner's petition for writ of certiorari.

Respectfully submitted,

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